

General information letters are intended to aid taxpayers in a determination of their tax liabilities. See 86 Ill. Adm. Code 1200.120. (This is a GIL.)

March 17, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 13, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Pursuant to 2 Ill. Adm. Code 1200.110 (b)(1-8), we are writing to seek a private letter ruling indicating the correct application of sales tax to the products we sell in your state. ABC is a network marketing company which sells nutritional and personal care products. These products are distributed through independent contractors (i.e. Distributors) who recruit other Distributors into their downline. Currently ABC collects and remits sales tax on behalf of its Distributors within the state of Illinois. We have reviewed your general information letter ST 01-00039-GIL and private letter ruling St 02-0008-PLR. Our questions center around whether or not our nutritional supplements and nutritional beverages qualify as foods under 86 Ill. Adm. Code 130.310 as you have previously indicated or ruled in the documents we have reviewed.

We have enclosed copies of labels, packaging and fact sheets (sales literature) for each of the products listed on Exhibit A. We would ask that you provide a written response verifying that tax is applicable to each of these products at the 1% food rate or that the higher sales and use rate should apply. For our records, we would also appreciate it if you would identify the statute, regulation or ruling which forms the basis of your determination.

We list each of the requirements of the rule governing this request and then provide the information requested:

1. A complete statement of facts and other information pertinent to the request. The request must contain a complete statement of all material facts. The material facts include the identification of all interested parties, a statement of the business reasons for the transaction, a detailed description of the transaction. The request must contain an analysis of the relation of the material facts to the issues.

Response: ABC sells nutritional supplements, nutritional beverages and non-food personal care items to independent distributors located in Illinois. ABC does not have stores or employed sales representatives in Illinois. ABC's distributors in turn sell their purchased ABC products to their own customers. ABC is currently registered for Illinois sales and use tax and is reporting and paying these taxes on all of its distributors' product sales in Illinois.

2. All contracts, licenses, agreements, instruments or other documents relevant to the request.

Response: For your review, ABC has enclosed copies of product packaging, labels and fact sheets (sales materials) for each of the products for which we seek a ruling.

3. An identification of the tax period at issue, and disclosure of whether an audit or litigation is pending with the Department.

Response: The periods at issue begin with July of 2004 and continue through the present. ABC is neither under audit or involved in litigation with the Department.

4. A statement that to the best of the knowledge of both the taxpayer and the taxpayer's representative the Department has not previously ruled on the same or similar issue for the taxpayer or a predecessor, or whether the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

Response: To the best of our knowledge neither ABC or its representative have previously requested a private letter ruling on the taxability of the products it sells.

5. A statement of authorities supporting the taxpayer's views, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.

Response: After reviewing ST 01-0039-GIL (02/22/01) and ST 02-0008-PLR (05/17/02) previously issued by the Illinois Department of Revenue for other taxpayers with similar products, it appears that ABC should be collecting and remitting tax at the 1% food tax rate on the products for which it seeks this ruling.

6. A statement of authorities contrary to the taxpayer's views. Each taxpayer is under an affirmative duty to identify any and all authorities contrary to the taxpayer's views. If the taxpayer determines that there are no authorities contrary to his or her views, or taxpayer is unable to locate such authority, the request must contain a statement to that effect.

Response: ABC is not aware of, nor can it locate any authority contrary to its view that it should be collecting and remitting the 1% Illinois food tax on the products for which it seeks this ruling.

7. An identification of any specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.

Response: There is to be no trade secret information including packaging, label or fact sheet (sales literature) information that will be included in ABC's private letter ruling which will be publicly disseminated.

8. The signature of the taxpayer or the taxpayer's representative. A taxpayer's representative must also provide a properly executed power of attorney.

ABC is a corporation and the signor of this request is duly authorized as a signatory of the corporation.)

We ask that you review our request and issue a private letter ruling on the products we have included herein. Additionally, we would ask that, if the information contained in this letter is not sufficient for the Department to issue such a ruling, you contact us to request either clarification or any additional information needed.

If you should have any questions, please call us.

DEPARTMENT'S RESPONSE:

The Department is unable to respond to your request regarding the specific tax liability for each product you have attached to your letter request. General information letters are intended to aid taxpayers in a determination of their tax liabilities. Private information letters are available to taxpayers in situations where an area of taxation is confusing or complex at best.

Many of the items listed with your letter request have been previously addressed in prior letter rulings, which may be found on the Department's website under the heading of "Laws/Regs/Rulings." For information and reference regarding food, drugs and medical appliances, please refer to the Department's regulation at 86 Ill. Adm. Code 130.310. The Department believes these regulations are sufficiently clear to enable taxpayers to make a determination of their individual tax liabilities. If a taxpayer has a question regarding a specific item, he or she may contact our Audit Division.

If however, you find that the statutes or regulations are not clear on a specific topic regarding the sales and excise tax liabilities, please indicate this matter to the Department, addressing which area you find is not clear, and your interpretation of the matter, and we will attempt to clarify same for your convenience.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Edwin E. Boggess
Associate Counsel

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